

LEGAL REGULATION OF THE PROCEDURE FOR ELECTIONS OF DEPUTIES OF THE MAJILIS OF THE PARLIAMENT OF THE REPUBLIC OF KAZAKHSTAN

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ABSTRACT

The article is devoted to the analysis of the electoral process during the election of deputies of the Majilis of the Parliament of the Republic of Kazakhstan. The electoral legislation of the Republic of Kazakhstan is at the stage of constant improvement. During almost twenty-five years of operation of the constitutional law "On elections in the Republic of Kazakhstan", there were made many amendments and additions to it, that became the object of research at the writing of this article. The lower chamber of the representative body of the Republic of Kazakhstan is formed through the election of deputies of the Majilis of the Parliament of the Republic of Kazakhstan, which has legislative powers. The article analyses the norms of electoral legislation regulating the participation of political parties and other public associations in the procedure of elections of deputies to the Majilis of the Parliament of the Republic of Kazakhstan. The authors, on the basis of the detailed study of the novels and some collisions of electoral legislation, propose the author's position on the issues of regulation of the procedure for the withdrawal of candidates for deputies from political parties and further improvement of the legal norms in this part. The methodological basis of this research was composed the tested general scientific and particular scientific methods of cognition of legal reality, which contributed to the comprehensive and most complete consideration of the constitutional-legal institution of elections as the element of direct democracy in Kazakhstan.

Keywords: Elections, Deputy, Electoral Legislation, Political Parties, Majilis, Parliament.

INTRODUCTION

The need to build the legal democratic state objectively put forward the electoral law and electoral legislation to the category of independent and priority areas of activity of state bodies, political movements and the public of the Republic of Kazakhstan. There is no doubt about the social-political and public-legal significance and relevance of this problematique, therefore the issues of formation and evolution of electoral legislation have great importance as the exclusive and legitimate way of realization of the active and passive electoral right of citizens by participating in free democratic elections. It should be recognized that modern electoral

legislation, which is based on the norms of the current Constitution and the Constitutional Law “*On elections in the Republic of Kazakhstan*” of September 28, 1995, regulates in sufficient detail the various forms of participation of citizens of the Republic in the electoral process, in general, and in its individual stages, in particular the procedure of elections. Together, they create the necessary legal prerequisites for the organization and conducting the various electoral campaigns and contribute to the establishment of the democratic mechanism for the realization of electoral rights of citizens. Being active member of OSCE and other authoritative international organizations, Kazakhstan adheres to its obligations on conducting free and competitive elections. The elections of the Head of state and the formation of the Parliament of the Republic of Kazakhstan, as well as local representative bodies, are held on the basis of appropriate conditions of openness and transparency in accordance with national legislation and international standards in the field of elections.

Elections are the most important form of control of citizens and their public associations over the activities of state bodies and bodies of local government. Thus, the importance of elections and procedures of their conducting as the democratic instrument of state development, extension of electoral processes to new areas of public relations, expansion of the range of normative-legal acts on elections and its multilevel nature, the ambiguity of approaches and decisions with respect to fundamental legal novels indicates the new stage in the development of electoral right and the process which, in turn, involves further analysis of the latest legal provisions and practice of their application. Problems, related to electoral right, constantly attracted the attention not only of lawyers, but also of sociologists, political scientists, philosophers. Interest in the researched theme has increased particularly in recent years. Many publications were emerged, the main theme of which is the analysis of the latest electoral legislation and practice of its application. Significant contributions to the development of electoral right were made by (Mukhamedzhanov, 2001) etc. These authors in their works not only criticized the shortcomings of the modern electoral system, but also expressed constructive ideas and suggestions that could contribute to further improvement of the legal framework of elections and their effectiveness. The main purpose of the research consists in the comprehensive analysis of the legislation of the Republic of Kazakhstan on elections, the legal regulation of the election procedure with regard to candidates for deputies of the Majilis of the Parliament, as well as the development of recommendations and suggestions for the improvement of electoral legislation in order to improve the norms of electoral right and the process.

RESEARCH METHODOLOGY

The methodological foundation of our research was general scientific methods of cognition, as well as analytical-systemic, formal-legal, logical and other methods of research were used, which are allowed to analyze comprehensively the system of legal regulation of elections in the Republic of Kazakhstan. During the research, the authors were taken as basis the analytical and systemic methods, which allowed to study the legislative basics of elections of deputies to the Majilis of the Parliament and to identify the main criteria of this process. Formal-legal and logical methods of comparison, description, classification, analysis and synthesis were used to study normative-legal acts regulating both the procedure of elections of deputies of the Majilis of Parliament and participation of political parties in the electoral process. The authors

used the particular-scientific and particular-legal methods: specific-sociological, comparative-legal, statistical, which helped to define basic concepts in the electoral process and to carry out the comparative analysis of the formation and development of legislation on the elections of deputies to the Parliament of the Republic of Kazakhstan.

RESULTS & DISCUSSION

Elections are one of the most democratic ways of forming the state authorities; in particular, the lower chamber of the highest representative body represented by the Majilis of the Parliament of the Republic of Kazakhstan is formed by such way.

Procedure of elections of deputies of the Majilis of the Parliament is constantly evolving: at first, there was fixed by law the majority system in the elections of deputies, which was introduced by the adoption of the Constitution of 1995 and the Decree of the President of the Republic of Kazakhstan, having the force of the constitutional law "*On elections in the Republic of Kazakhstan*", then the mixed system of elections of deputies was adopted, introduced by amendments and additions to the Constitution of the Republic of Kazakhstan in October 1998 and amendments to the Constitutional Law of 1999, and the last stage is the complete transition to the proportional electoral system, which is currently applied in the elections of deputies of the Majilis of the Parliament of the Republic of Kazakhstan, adopted by amending the Constitution of the Republic of Kazakhstan in May 2007 and amending the constitutional law on elections in 2007.

The electoral legislation of the Republic of Kazakhstan is constantly being improved, which allowed having the greater number of political parties in the Parliament representing a wide range of interests of different social strata of society.

Special role of political parties in the procedure of elections of deputies of the Majilis of the Parliament of the Republic of Kazakhstan is highlighted. The research of the relevant legal norms, regulating these processes, allows concluding that it is necessary to further improve both the electoral legislation and the law of the Republic of Kazakhstan "*On political parties in the Republic of Kazakhstan*."

The Constitution of the Republic of Kazakhstan, adopted by nationwide referendum of August 30, 1995, establishes for the first time the official concept of the legislative body Parliament (Constitution Law, 1995). Further, after the adoption of the Basic Law of the state, the President of the country signed the Decree, having the force of the Constitutional Law "*On elections in the Republic of Kazakhstan*", according to which the first elections of deputies to the two-chamber Parliament were held. The two-chamber structure of the representative body was quite politically justifiable, it was become the fundamentally new constituent element in the constitutional-legal reality of our country and was met the principles of parliamentarians established in world practice. The establishment of the two-chamber Parliament in Kazakhstan, undoubtedly, improved the quality of adopted laws. Further processes of formation and development of democratization, taking place in the legal system of Kazakhstan, accordingly affected the Parliament, in particular, it is concerned the procedure of formation of the Majilis of the Parliament of the Republic of Kazakhstan. The Majilis of the Parliament is the lower chamber of the highest representative body of the Republic of Kazakhstan. If we consider the evolution of such processes, it should be noted that before, according to the Constitution of the

Republic of Kazakhstan, at the time of its adoption, Majilis consisted of 67 deputies who were elected under the majority electoral system (Constitutional Law, 1995). Further, through the constitutional reform of May 21, 1998, the number of deputies of the Majilis increased to 77, that is, there were more parliamentary mandates on ten. At the same time, sixty-seven deputies, as before, were elected on single-mandate territorial electoral districts, formed taking into account the administrative-territorial division of the Republic and with the approximately equal number of voters. As for the 10 deputies, they began to be elected on the basis of party lists on the system of proportional representation and on the territory of the single electoral district.

This made it possible to have representation in Parliament with the larger range of political parties, reflecting the interests of different social strata of society; in addition, there was the greater possibility for voters to determine their political preferences more accurately and correctly. According to the Constitutional Law of May 6, 1999, the current legislation on elections was supplemented with the provision on the right of political parties to participate directly in the elections of deputies of the Majilis by submitting their party lists with candidates for election to the deputies of the Majilis (Constitutional Law, 1995). This right belongs to political parties, which were registered in accordance with the procedure established by law and have the status of the Republican Party. Procedure for inclusion in party lists of persons for their election as deputies of the Majilis in the territory of the single nationwide electoral district. The inclusion of persons in the party list is carried out by the highest body of the political party. At the same time, the person, included in the party list, may not have previously been the member of it, but now, according to Article 87 of the Constitutional Law "*On elections in the Republic of Kazakhstan*", only members of this political party are included in the party lists (Constitutional Law, 1995).

Political parties determine independently the order of placement of persons included in the party list. The party list is submitted to the Central electoral commission with the extract from the minutes of the highest body of the political party on the nomination of the party list.

Mukhamedzhanov (2001) writes that the analysis of electoral legislation of the CIS countries on issue of the circle of subjects on nomination of candidates for deputies shows that political parties have this right in almost all CIS countries. The Law of the Republic of Kazakhstan "*On the political parties*" (subparagraph 3 of paragraph 1 of Article 15), adopted of July 15, 2002, established the right of the political party to nominate candidates for the President of the Republic of Kazakhstan, deputies of the Majilis of Parliament and maslikhats of the Republic; through its representatives in maslikhats to suggest the candidates in deputies of the Senate of the Parliament of the Republic of Kazakhstan. At the same time, Article 9 of the Law "*On political parties*" regulates that the Charter of the political party should contain the procedure for nominating candidates from the political party (lists of candidates) for deputies and for other elected positions in bodies of state power and bodies of local self-government.

The Charter of the political party in accordance with subparagraph 9 of paragraph 1 of Article 9 of the Law "*On political parties*" must specify the grounds for withdrawal or rotation of candidates for deputies of the Majilis, nominated by the political party, within the territory of the single national electoral district (Law, 2002). It seems that this provision on withdrawal of candidates nominated by the political party for deputies of the Majilis is very controversial. It should be noted that the meaning of Article 9 of paragraph 1 of subparagraph 9 is difficult to clearly understand. Firstly, the withdrawal and rotation apply only to candidates for deputies of

the Majilis, nominated by the political party, who are not elected by the population till the moment, or the rotation and withdrawal applies to persons elected as deputies of the Majilis from this political party. In this case, a number of conflict-of-laws issues arise. First of all, paragraph 5 of Article 52 of the Constitution of the Republic of Kazakhstan provides the list of grounds for termination of powers of the deputy of Parliament.

The Constitution refers to them: resignation, recognition of the deputy as incapacitated, dissolution of the Parliament. In addition, the deputy of the Parliament is deprived of his mandate upon entry into force of the conviction of the court against him, his departure for permanent residence outside the Republic of Kazakhstan. The Constitution does not provide as a basis for the termination of the powers of the deputy of Parliament the withdrawal the political party that nominated him. With regard to the rotation of candidates nominated by the political party for deputies of the Majilis, then, in this case, the law should clearly state that rotation is possible if the powers of the deputy, representing the political party, are terminated. Therefore, subparagraph 9 of paragraph 1 of Article 9 of the Law of the Republic of Kazakhstan "*On Political Parties*" should be redacted: "*Rotation of deputies of the Majilis nominated by the political party is possible if their powers are terminated on the grounds established in the Constitution*" (Law, 2002). And we believe that Article 15 of the Law "*On political parties*" can be supplemented by this provision, where the rights of political parties are regulated and there should be specified that the rotation of deputies of the Majilis as the right of the political party.

In addition, in our view, there is the certain collision with Article 97-1, paragraph 5 of the Law "*On elections*", which defines the conditions for transferring the mandate of the prematurely retired deputy of Majilis, elected on the basis of party lists on the system of proportional representation. Paragraph 5 of Article 97, p. 1 of the Constitutional Law "*On elections*" stipulates that the mandate of the prematurely retired deputy shall be transferred by the resolution of the Central electoral commission to the next candidate elected from the same party list (Constitutional Law, 1995). In case there are no candidates left in the relevant party list, the mandate remains vacant until the next election of deputies of the Majilis. Proceeding from the logic of representation in the highest legislature of the party, it seems that the party that won the parliamentary mandate has the right on rotation of the deputy from the list of its members. We believe that exactly in this case the Charter of the political party should be contained the conditions for such action. The institution of elections got further formation in the issues of establishment of the mechanism for the elections of deputies of the Majilis and the Senate, as well as the determination of winners in elections and the distribution of deputy mandates, where the new redaction of Article 51, paragraph 5 of the Constitution was devoted to it. According to it, the candidate, who received more than 50% of the votes of voters or electors who took part in the voting, is considered elected. Deputy mandates on the results of elections to the Majilis on the basis of party lists will be distributed among political parties, which received not less then seven percent of votes of voters who took part in voting (Constitution Law, 1995).

According to Article 97, p. 1, introduced by the Constitutional Law of the Republic of Kazakhstan "*On the Parliament of the Republic of Kazakhstan and the status of its deputies*" of May 6, 1999, deputy mandates are distributed in strict accordance with the sequence of placement of candidates in the relevant party list (Constitutional Law, 1995). Thus, firstly, the barrier is removed, according to which the election of deputies of the Parliament was considered valid if more than 50% of voters participated in them. The improvement of electoral legislation

has the permanent nature, since over the past years the electoral legislation has been constantly amended with regard to the elections of deputies to the Majilis of the Parliament of the Republic of Kazakhstan. The confirmation of the general directivity towards democratization of political processes was adoption of amendments to the Constitutional Law of the Republic of Kazakhstan "*On elections in the Republic of Kazakhstan*" of April 14, 2004 and June 29, 2018. The constitutional legislation on elections went along the path of liberalization and further democratization of the electoral process in Kazakhstan. First of all, the procedure of forming the electoral commissions on the places was changed.

Earlier, the akims of the respective administrative-territorial units and the central electoral commission participated in the formation of election commissions. At present, according to paragraph 3 of Article 10 of the Constitutional Law "*On elections in the Republic of Kazakhstan*", the territorial electoral commissions are formed by the Central electoral commission. At the same time, local electoral commissions are formed respectively by territorial commissions. District electoral commissions were excluded according to the amendments to the Law of June 29, 2018. Members of territorial and local electoral commissions are formed by maslikhats on the basis of suggestions of political parties. Each political party has the right to submit one candidate to the relevant electoral commission. At the same time, the political party has the right to submit to the structure of electoral commission the candidates who are not members of this political party. That is, large segments of the population, represented through political parties, have the possibility to participate in this important and political event. The novel of this law is that members of electoral commissions are elected currently by the relevant maslikhats-local representative bodies.

In cases, defined by Constitutional Law, other public organizations and higher electoral bodies may participate in the formation of election commissions. The chairman, his deputy and the secretary of the electoral commission are elected at the first meeting of the commission (Constitutional Law, 1995). It should be noted that there is the normative Decree of the Constitutional Council of the Republic of Kazakhstan of April 9, 2004 on the interpretation of subparagraph 4 of Article 1 of the Constitutional Law "*On the elections*" with regard to its conformity with paragraph 2 of Article 5 of the Constitution of the Republic of Kazakhstan, which recognized constitutional participation in the activities of electoral bodies of relevant public associations, in particular, political parties (Constitutional Council, 2004). The analyzed law, in Article 20, paragraph 1, provides for the conditions for ensuring publicity in the activities of electoral commissions, which has the beneficial effect in general on the transparency and objectivity of conducting the electoral process (Constitutional Law, 1995). Observers are among these new participants in the electoral process. Each polling station may be attended by one observer from the political party, the public association, the non-profit organization of the Republic of Kazakhstan and observers of foreign states and international organizations in order to monitor compliance with the legality of the electoral process. Observers, as well as proxies and representatives of the mass media, have the right to be present at all stages of the electoral process, as well as to receive any information about the electoral process from the electoral commissions.

The past elections to the Majilis of Parliament showed that observers, as participants in the electoral process, play the significant role. It should be noted that the analysis of the powers of observers makes it possible to conclude that their status is almost equal to the status of

proxies. It is important to note that another significant procedure in relation to the elections of deputies of the Majilis is the compilation of voter lists. Voter lists are one of the most serious challenges in monitoring the integrity and transparency of elections. There are objective reasons for this, connected with imperfections of the system of registration of voters. At the same time, it is obvious that voter lists are the convenient tool for possible manipulations, moreover public control over their correctness is significantly difficult. The Constitutional Law "*On elections in the Republic of Kazakhstan*" of September 28, 1995, Article 24, paragraph 5, clearly regulates the procedure for drawing up voter lists and reflects the interaction between the relevant state bodies (Constitutional Law, 1995). Thus, the voter lists are currently compiled by the relevant local executive body, and it should be noted that officials are responsible for the reliability of the voter lists, as well as the data on voters.

The legislator establishes that the lists of voters for each polling station are signed by the corresponding Akim and submitted under the act twenty days before the beginning of voting to the election commission. It should be noted that the local executive authorities receive a lot of complaints about the validity of the voter lists during the period of the elections to the Majilis. Having conducted the comparative analysis of the legislation on elections, it should be noted that the current Constitutional Law is tightening the conditions of election campaigning. According to the Article 27 of paragraph 5, it is prohibited the use of the advantage of official or official position to candidates who are officials of state bodies (Constitutional Law, 1995). The legislator clearly gave the concept of using the advantage of the official position. The use of official position should be understood as: firstly, involvement of persons, who are under subordinate or other official dependence, to the implementation of election campaigning, except the cases when these persons carry out campaigning as proxies of the candidate; use of premises occupied by state bodies for carrying out activities that contribute to the election of the candidate or the political party that has nominated the party list, if other candidates and political parties are not guaranteed the use of these premises. According to Article 31 of the Constitutional Law, not only candidates, but also political parties have the right to have proxies (Constitutional Law, 1995).

The legislator determines the specific number of proxies, so candidates, political parties that have nominated party lists, determine proxies at their discretion in a number not exceeding three persons per polling station in the respective electoral district, and report about them to the relevant electoral commission for registration. The reformation of the constitutional legislation on elections shows that the legislation has gone along the path of the fair steady reduction of the electoral contribution made by political parties to elective positions. It seems that this provision indicates further democratization of the electoral process in the Republic of Kazakhstan. Political parties make a contribution in the amount of fifteen times the minimum wage, established by law, for each person included in the party list; this provision is defined by the provisions of article 88 of the above-mentioned law (Constitutional Law, 1995).

If previously the candidate for the elective position had to make the electoral contribution only from his own funds, at present the legislation does not specify the origin of these funds. It seems that the electoral contribution from the candidate can be made from the funds of the political party, the public association, etc., which support this candidate. It seems that this constitutional establishment contributes to the liberalization of the electoral process, allowing a wider range of citizens to participate in the elections as candidates. At the same time, with amendments to the legislation on elections, the requirements for the formation of electoral funds

of candidates in deputies of the Majilis of the Parliament were changed. It is reflected in Article 92 of paragraph 1 that "*candidates, running on party lists, nominated by political parties, are not entitled to create their own electoral funds*".

The electoral fund of the political party is formed by:

1. Own funds of a political party, the total amount of which should not exceed the minimum wage established by law more than five thousand times;
2. Voluntary donations of citizens and organizations of the Republic, the total amount of which should not exceed the minimum wage established by law more than ten thousand times (Constitutional Law, 1995).

The conditions for the participation of political parties in the electoral process are regulated in sufficient detail. First of all, the political party can nominate candidates for deputies of the Majilis with one party list. Only party members are included in party lists if there is the application for consent to run for deputy. Only one-party list from one political party is allowed for registration. The party list should not exceed the established number of mandates by more than 30 percent. The legislator clearly determines the circumstances under which the registration can be refused or the decision to register the party list can be canceled (Article 89 p.6) (Constitutional Law, 1995). Analyzing the norms of the legislation on elections, it is raised doubts the amendment concerning the impossibility of choosing the deputy who left a year before the expiration of the term of office of the electoral body: The Senate and Majilis of the Parliament and Maslikhats (paragraph 2 Articles 83; paragraph 2 of Article 99) (Constitutional Law, 1995).

Would not it be the violation of the constitutional right of citizens on representation of their interests in the highest and local bodies of state power? During the whole year, the population and specific citizens will be deprived of their representation in the maslikhat, or in the Majilis and the Senate of the Parliament. According to Article 33 of the Constitution of the Republic, citizens are vested with the right to participate in managing state affairs through their representatives, which in this case is violated. Chapter 9-1 "*Peculiarities of conducting elections using the electronic election system*" is the newly introduced novel of constitutional legislation. One of the authors expressed his attitude to the problems of electronic voting during the discussion of the draft amendments to the Constitutional Law (Amandykova, 2004). The term "*electronic electoral system*" is introduced into the circulation of electoral legislation, by which the legislator understands the set of information technologies, information networks and means of their software and technical support, intended for automatization of information processes at the preparation and conducting the elections (Article 50- 1 paragraph 2) (Constitutional Law, 1995).

We believe that the term electronic electoral system itself requires clarification. It would be more correct to introduce the term "*electronic systems in the electoral process*" and separately the term "*electronic voting*" and to define the criteria for each of them in the law itself. It seems that the constitutional law should clearly reflect the functions of the electronic electoral system. At present, the main goals and tasks of the electronic information system are very vaguely formulated. Without denying the need to use automated information systems, which is due to objective factors this is the need to digitalize the electoral process and the need to switch from

routine technology to high-tech procedures at the conducting the elections, we believe that it is necessary to establish clearly defined criteria for the use of the electronic electoral system.

CONCLUSION

Thus, the latest stage of the constitutional development of the Republic of Kazakhstan in the field of electoral legislation is characterized by special dynamism and the implementation of liberal-democratic ideas in constitutional legislation. It should be noted that the electoral process in the Republic of Kazakhstan has passed several stages related to the elections of deputies in the Majilis of the Parliament RK. The first stage is characterized by the existence of the majority electoral system, when elections of deputies in the Majilis were held in single-mandate territorial districts, which was regulated by the Constitution of 1995, and Decrees of the President of the Republic of Kazakhstan, which have the force of the Constitutional Law "*On elections in the Republic of Kazakhstan*" and "*On Parliament and the status of its deputies*", adopted in 1995 as well. The second stage is characterized by the introduction of the mixed electoral system, when part of deputies of the Majilis were elected by majority system, and part by proportional electoral system, which was adopted by way of amendments to the Constitution of the Republic of Kazakhstan in 1998 and to the Constitutional Laws of the Republic of Kazakhstan "*On elections in the Republic of Kazakhstan*" and "*On the Parliament of the Republic of Kazakhstan and the status of its deputies*" in 1999. At present, we can argue about the transition to the proportional system of elections of deputies in the Majilis of the Parliament of the Republic of Kazakhstan, introduced by the constitutional reform of 2007, when the relevant changes were made to the Constitution of the Republic of Kazakhstan and constitutional laws. Special attention should be paid to the significant strengthening of the role of political parties at the elections of deputies of the Parliament of the Republic of Kazakhstan, which requires further improvement of the legislative regulation of the mechanism of participation of political parties in the electoral process.

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